IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

OP.No. 9963 of 1999(J)

PETITIONER:

JNANODAYAM SABHA, EDACOCHIN,
COCHIN-6, REP: BY SECRETARY: M.K.CHANDRABOSE,
AGED 54, S/o.KRISHNAN

BY ADV. SRI.P.K.RAVEENDRAN PUZHANKARA
SMT.JAYASREE MANOJ
SMT.SIBA MARTIN

RESPONDENTS:
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1. **CORPORATION OF COCHIN, CORPORATION BUILDINGS, PARK AVENUE, ERNAKULAM REP. BY ITS SECRETARY.**

2. **STATE OF KERALA REP: BY THE SECRETARY, MINISTRY OF LOCAL ADMINISTRATION (B) DEPARTMENT, SECRETARIAT BUILDINGS, THIRUVANANTHAPURAM.**

BY ADV. SMT.I.SHEILA DEVI.
R2 BY GOVERNMENT PLEADER SRI.P.N. SANTHOSH
R1 BY SRI.S.RAMESH BABU, SC.COCHIN CORPN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 24/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.Nos.16363 & 28464 OF 1999 IN O.P.NO.9963 OF 1999

DISMISSED

24.10.2007 Sd/- THOTTATHIL B.RADHAKRISHNAN,JUDGE

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF REGISTRATION CERTIFICATE DT.28.6.1978 ISSUED TO THE PETITIONER.

EXT.P2: COPY OF CONSTITUTION AND BYE-LAWS OF THE PETITIONER.

EXT.P3: COPY OF LETTER NO.F-3-32/91 P ARTS DT.21.3.91 ISSUED FROM THE MINISTRY OF HOME RESOURCE DEVELOPMENT, DEPARTMENT OF CALCUTTA, NEW DELHI ISSUED TO THE PETITIONER.

EXT.P4: COPY OF MEMO NO.98472 DT.1.12.93 ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT.

EXT.P5: COPY OF REPRESENTATION JS 10/98 DT.17.3.98 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P6: COPY OF THE COMMUNICATION DT.15.10.98 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P7: COPY OF LETTER SYR 3-AP 1/96 DT 19.12 98 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P8: COPY OF THE NOTICE DT.23.2,99 ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT CLAIMING Rs.61,425/-

EXT.P9: COPY OF THE NOTICE DT.23.2.99 ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT CLAIMING RS.49,890/-

TRUE COPY

P.A.TO JUDGE

THOTTATHIL B.RADHAKRISHNAN,J

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O.P.No.9963 of 1999

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Dated this the 24th day of October, 2007

JUDGMENT

The petitioner constructed an auditorium before the commencement of the Kerala Municipality Act, 1994 hereinafter referred to as the "1994 Act" which is deemed to have come into force on 13.5.1995 by virtue of Section 1(3) thereof. This conclusion is being arrived at because, even Ext.P4 assessment is made on 1.12.1993.

2. The claim of the petitioner for exemption at that point of time was based on Section 103(1) (d) of the Kerala Municipal Corporation Act, 1961, herein after referred to as the "1961 Act", which then governed the field.

3. Though the Corporation had, on the request of the petitioner for exemption, reduced the tax assessed, the petitioner carried the issue to the Government, which ultimately issued the impugned Ext.P6 decision holding that the petitioner is not entitled to claim exemption in the wake of 1994 Act.

4. If the petitioner is entitled to succeed on the strength of Section 103(1) (d) of the 1961 Act such an exemption would be available till a legislation comes to govern the field overriding the exemption available under that provision. As already noticed the 1994 Act came into force only on 30th May, 1994. The building of the petitioner, having been completed sometime in 1992, the question of exemption from property tax till 13.5.1994 has to be decided in terms of Section 103 of the 1961 Act.

5. In so far as the claim after 30th May, 1994 is concerned, the provisions are entirely different. The sweep of Section 235 of the 1994 Act is wider and different decisions, including **Attukal Bhagavathy Temple Trust v. Corp. of Tvm (2001 (1) KLT 108),** have been rendered by this Court under the 1994 Act.

6. For the aforesaid reasons, the decision of the Government rejecting the claim of the petitioner on the ground of intervening legislation, namely, the 1994 Act, does not stand. The claim for exemption from payment of property tax under the 1961 Act has to be decided by the Government with reference to Section 103 of that Act. Such decision would govern parties for the period till 30th May, 1994. Thereafter the parties will be

governed by the provisions of the 1994 Act and the Government ought to considered the question as to whether the petitioner's building in question is eligible for exemption under the provisions of the Section 235 of the 1994 Act.

For the aforesaid reasons, Ext.P6 is quashed. The parties are relegated to the Government for consideration of the aforesaid issues in the light of what is stated above. The Government would also consider that in the event of the petitioner being liable to pay tax, whether it would be entitled to any consideration for payment in instalments. The Corporation shall be bound by the decision of the Government in this regard. The petitioner and the Corporation would be given an opportunity of being heard and the matter decided within an outer limit of six months from the date of receipt of a copy of this judgment.

The writ petition is disposed of accordingly.

THOTTATHIL B.RADHAKRISHNAN, JUDGE

dvs